

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD L. VAN WINKLE,) CASE NO.: C06-0916-JCC
Petitioner,)
v.) ORDER DISMISSING § 2254
JOSEPH D. LEHMAN,) PETITION WITHOUT PREJUDICE
Respondent.)

The Court, having reviewed petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, respondent's motion to dismiss, petitioner's response, the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, any objections thereto, and the balance of the record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
- (2) Respondent's motion to dismiss (Dkt. #9) is GRANTED;
- (3) Petitioner's § 2254 petition (Dkt. #1) is DISMISSED without prejudice; and,
- (4) The Clerk shall send a copy of this Order to petitioner, to counsel for respondent, and to Judge Theiler.

DATED this 7th day of December, 2006.



John C. Coughenour
United States District Judge